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September 21, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: May 2, 2006

Case Number: TSO-0384

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor (the DOE Contractor) and has possessed a DOE access authorization since the late 1980's. In 1992, the DOE conducted a personnel security interview (PSI) with the individual concerning adverse information contained in his credit report. The DOE conducted additional PSI's with the individual concerning his financial problems in 2001, 2002, 2004 and 2005. Based on its concerns with the individual's continuing financial problems, the DOE suspended his access authorization in November 2005.

In January 2006, the Manager of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. The Notification Letter indicates a security concern under Sections 710.8(1) of the regulations governing eligibility for access to classified material. Criterion (1) concerns information that an individual has engaged in unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the

individual to act contrary to the best interests of the national security.

With respect to Criterion (1), the Notification Letter refers to the following derogatory information that raise concerns about the individual's inability to manage his finances:

A. During a 1992 PSI, the individual acknowledged and discussed three delinquent accounts.

B. In a 2001 PSI, the individual indicated that he had filed for bankruptcy in October 1999 and acknowledged that he still had two delinquent accounts.

C. In a 2002 PSI, the individual stated that his 1999 bankruptcy had discharged approximately \$50,000 in debts, and stated that he no longer has "active" credit cards. He also stated that his mortgage was several months tardy, and that two of his vehicles had been repossessed.

D. In a 2004 PSI, the individual confirmed that he was arrested in April 2004 for having written a bad check four years earlier. He also acknowledged that his 2004 credit report indicated several delinquent accounts.

E. In a May, 2005 PSI, the individual acknowledged that his 2005 credit report continued to indicate several delinquencies in the payment of his financial obligations, and that he anticipated additional significant, financial expenditures relating to home repairs.

Enclosure 1 to January 2006 Notification Letter.

The individual requested a hearing to respond to the security concerns raised in the Notification Letter. In a June 8, 2006 response to the Notification Letter, the individual contended that no credible evidence exists to support the DOE's concern. He also stated that he intended to show at the Hearing that his access authorization should not have been suspended pursuant to Criterion (1), and that he meets most of the mitigating conditions for Criterion (1) that are described in "Guideline F: Financial Considerations" of the DOE's "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information", published as Appendix B to Subpart A of Part 710. The individual

further asserted that he is trustworthy, responsible and very patriotic. The hearing was convened in July 2006 (hereinafter the "Hearing"), and the testimony focused on the individual's efforts to demonstrate that he has not acted irresponsibly in the past with respect to his family's finances, and that his current financial situation is sufficiently stable to mitigate any Criterion (1) concerns.

## II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b), (c) and (d).

### A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

#### *B. Basis for the Hearing Officer's Decision*

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

### *III. HEARING TESTIMONY AND DOCUMENTARY EVIDENCE*

At the Hearing, testimony was received from nine persons. The DOE counsel presented the testimony of the personnel security specialist who interviewed the individual in 2002 (security specialist I) and the personnel security specialist who interviewed the individual in 2004 and 2005 (security specialist II). The

individual testified and presented the testimony of his wife, a neighbor, a family friend and his wife, and an official at the individual's credit union.

At the Hearing, the DOE counsel stated that the individual's May 2005 and July 2006 Equifax credit reports (hereafter the 2005 and 2006 credit reports) provide adequate evidence that the individual's bankruptcy proceeding was discharged properly in 1999. Hearing Transcript (TR) at 32-33. Accordingly, the testimony at the Hearing focused on the individual's management of his financial affairs from 1999 until 2006. At the outset of the Hearing, the DOE counsel and the security specialists discussed with the individual certain delinquent accounts that appeared on the individual's May 2005 and July 2006 credit reports. Later in the Hearing, the DOE counsel discussed the individual's estimated monthly budget with the individual and his wife. I will summarize the key testimony concerning the credit reports and the family budget, followed by additional testimony from the security specialists, the individual, and his witnesses.

*A. Discussion of the Individual's 2005 and 2006 Credit Reports*

The DOE counsel stated that the individual's 2005 Credit Report at page 2 indicates a charged off account listed as AMERICACREDI for \$10,987 and a charged off account listed as CAP 1 BANK for \$508. She also noted that prior to being charged off, there were three occasions when the CAP 1 BANK account was more than 90 days past due. TR at 25-26. She next pointed out that an account listed as FST PREMIE was charged off with \$690 outstanding and that and an account with a furniture store had a balance owing of \$2483 and a past due amount of \$720. TR at 28-29. Finally, she noted a balance owing on TRANSOUTH AUTO of \$7,151. Six late payment dates are noted for the TRANSOUTH AUTO account, which the DOE counsel indicated could raise a concern for the DOE that there is a history of late payments. TR at 31.

With respect to the individual's 2006 Credit Report, the DOE counsel indicated that an account listed as ALLTEL was opened by the individual in September 2005, and that the account has been charged off with a balance owing of \$2,015. TR at 34. With regard to the ALLTEL account, the individual stated that he was disputing their bill for telephone services because he believed that they had overcharged him.

They refused to do anything about it so we refused to pay it. And then what they did is they . . . said you are

cancelling the contract and we are going to charge you so much per phone. And that is how it got up to two thousand dollars. We only owe them about four fifty and I'm not going to pay two thousand dollars. I'll pay maybe four fifty and I have told them that time and time again, but they will not deal with us.

TR at 37. Security Specialist I then stated that the individual's position concerning his telephone bill indicated a pattern of not paying financial obligations.

[DOE security looks] for positive improvement of bills and positive improvement says give us something from a financier saying that a bill has been paid. Give us something saying that you are making arrangements. Show us something. A dollar sent to it. Show us that you are making improvement.

TR at 38-39.

The DOE Counsel stated that the 2006 Credit Report next shows an account listed as AMER GEN that was opened in 2000 and charged off with a balance owing of \$1110. TR at 34. The individual contended that he had paid off this account. He asserted that he took out a loan from his federal credit union to pay the account (TR at 30), but that the payment is not showing up on his credit report. TR at 34. The individual's wife testified that they had taken out a loan to pay the charged off balance about seven or eight months ago.

I know it took them three or four months to get us the letter that it was all cleared. Because we cleared it through a different company again. We didn't clear it through American General, we cleared it through their finance company, a different finance company. And then they had to notify American General that it had been paid. . . . And the loan for that at C-plan is paid too. That was paid on time.

TR at 125-126. She stated that she would fax the DOE a copy of the letter acknowledging that the debt had been cleared. TR at 126. 1/

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1/ This letter appears at p. 73 of a seventy four page submission that the individual faxed to this Office on July 24, 2006.

The DOE Counsel stated that information listed on page 2 of the 2006 Credit Report indicates that the individual refinanced his home in 2001 and 2003, and that he frequently has been late in making mortgage payments.

The issue here is that is a past due current amount as of May of this year. . . . There is a past due current amount of \$2402. And since August of 2003, which is basically three years, there have been five occurrences of ninety days past due on this mortgage. And similar occurrences on the previous mortgages before he refinanced the house.

TR at 40. The individual stated that in 2005 and 2006, his mortgage company

had us on a payment plan and they told us you had to pay this much every month for six months, but it would show up late on the credit report. They told us right off. And we honored that and after six months we got off that and we got back on another plan. On a regular payment schedule.

TR at 42. The individual also stated that he had difficulty with mortgage payments because

We have a variable mortgage so the interest goes up and the payments go up and makes it a little bit harder to pay.

TR at 42-43. He also stated that his efforts to keep up with his bills were hurt by the loss of overtime pay following the revocation of his clearance in late 2005.

I was working about twenty hours a week overtime, which equates to quite a bit of money. And I was using that to catch up on a lot of stuff and keep my mortgage going. So without it, it put me in a bind. And I certainly wasn't expecting it. It seemed to hit me out of the blue.

TR at 43. 2/

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2/ The individual testified that currently he works about four to  
(continued...)

The DOE counsel next stated that the charged off account listed as AMERICACREDI for \$10,987 and a charged off account listed as CAP 1 BANK for \$508 that appeared on the individual's May 2005 Credit Report still appeared on his July 2006 Credit Report. TR at 43. With respect to the AMERICACREDI account, the individual stated that

Last week, or week before, they sent me some paperwork to pay it off for like five thousand some odd dollars and tomorrow I'm going back to [my home town] and see if I can get a loan, that is really the only way I can take care of that right now.

TR at 45. The individual stated that he was not certain that he could get a loan from his credit union to finance this settlement offer. TR at 85.

The DOE counsel stated that the accounts for CITI AUTO and FST PREMIE indicated a pattern of late payments, with the CITI AUTO payments being more than 30 days late 25 times in the 72 months since the account was opened, and the FST PREMIE payments being more that 90 days late 21 times since July 2000. TR at 46. While the individual's May 2005 Credit Report indicates a charged out account from a furniture store for a balance owing of \$2,518, this balance owing does not appear on the individual's July 2006 Credit Report. The individual testified that he had disputed the charged off amount with a representative of the furniture store and eventually reached a settlement. TR at 49. 3/

The DOE counsel stated that the individual's credit history since his 1999 bankruptcy indicated ongoing, unresolved financial problems and, despite his repeated assurances to the DOE, no solid evidence of progress in resolving these problems.

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2/(...continued)

eight hours of overtime per week. TR at 160-161.

3/ The individual stated that he would fax this settlement agreement to the DOE. TR at 49-50. However, he does not appear to have included the settlement agreement in his post hearing submissions, only a "statement of account" concerning this debt which he submitted as page 14 of his one hundred page July 24, 2006 facsimile transmission. Because the charged off account no longer appears on the individual's credit report, I will accept his explanation that this outstanding debt has been resolved.



. . . what we have asked for since 1999 is simply documentation that something is either being done toward addressing these debts in arrears, or something has been done. And in the interviews, what the pattern has been and response is; I'm working on it, but there has been no documentation. . . . It has always been . . . basically, take my word for it. And no matter how much we are predisposed to do that, and I think there is an argument made that we have been predisposed to do that working on this case for fourteen years to try to help [the individual] with his debt issue and financial responsibility, all we have in the record as proof are these credit reports and they are very damaging evidence and there's no hard evidence of mitigation.

TR at 52.

*B. Discussion of the Individual's Estimated Family Budget*

On July 17, 2006, the individual submitted a monthly budget of his current family income and expenses prior to the Hearing. This budget indicates a total monthly family income of \$6,016, total monthly expenses of \$5,388, and a monthly surplus of \$628. However, in his testimony at the Hearing, the individual stated that about two weeks prior to the Hearing he lost the per diem reimbursement for his living expenses while working at a location away from his family home. TR at 108. He stated that his current share of the rent at his work location is about \$440 per month. He stated that he is looking for another DOE position that pays a per diem, and also is looking for a living arrangement in his work location that is less expensive. TR at 109-111. The family budget lists the individual's wife's monthly salary at \$1,840. However, in her testimony, the individual's wife stated that "I don't know if it really is that high, honestly." TR at 144. She stated that she earns \$654 every two weeks. TR at 130. She stated that her employers

don't take out a lot of tax for me, but they do take an extra \$58 out for insurance.

TR at 145. Finally, she estimated that her pretax bi-weekly income is between eight and nine hundred dollars per month. TR at 144-145.

*C. Security Specialist I*

Security specialist I who conducted the 2002 PSI (specialist I) testified that he has worked as a personnel security specialist for about twenty years. He stated that when he interviewed the individual in 2002, he had doubts that the individual was sincerely committed to resolving his financial problems.

I would have to say I couldn't say that he was dishonest, but I'm not so sure about his sincerity. He may not have lied, but I think he knew he had financial problems and he was going to tell us whatever he thought would get us off his back. He gave us the answers that we had gotten before. That he was going to take care of it, that he would pay it, that he would take care of it. What we wanted to hear just so we would get off his back.

TR at 13.

At the close of the Hearing, Security Specialist I repeated his concern that the individual has repeatedly provided the DOE with assurances that he was addressing his financial problems, but has never followed up with the documentation to support his statements. TR at 164.

*D. Security Specialist II*

Security Specialist II testified that he has sixteen years of experience in government personnel security and has been with the DOE for two years. He testified that his job is to assess the risk of someone with access to classified information or special nuclear material. He testified that the inability to meet financial obligations indicates that an individual is a higher security risk. TR at 18. He stated that there are several charge-offs listed in the individual's credit reports, and that they indicate instances where creditors have given up on collecting an amount owed by the individual. He stated that these charge-offs have remained on the individual's credit reports for years and involve substantial amounts of money, indicating that the individual is unable to meet his financial obligations. TR at 20. He testified that the charge-offs can be removed from the credit report if the individual negotiates a settlement with the creditor, but that he evidently has not done so. TR at 21-22.

E. *The Individual*

The individual testified that since his bankruptcy proceeding in 1999, he has had extraordinary family responsibilities that have kept him from resolving his financial problems.

For example, my daughter got in a car wreck. She got ejected out of the back window and took out the whole back window. Nearly died. . . . I have my choice of paying one of these debts [listed on the credit reports] or making sure that she gets physical therapy. Which one should I choose? My financial responsibility lies with my family and my daughter comes first.

TR at 55. He stated that he had records where he paid some of his daughter's physical therapy bills and would submit them to the DOE. TR at 56. He stated that a bit later, his son was in a car wreck, and that a couple of months later, he hit a deer.

I mean, all this stuff starts adding up. And yeah, sometimes I used the credit cards. And then something else happens and now I don't have enough money to pay on this and I fall behind.

TR at 62. He stated that the roof of his house received hail damage, and that his insurance company only sent him about \$1700 for work that cost him \$5700. TR at 63-64. He stated that although he has repeatedly promised the DOE that he will resolve his post bankruptcy credit problems, he cannot guarantee that he will resolve these problems because unforeseen expenses arise.

Murphy's Law hits all the time, seems like. And every time I turn around something goes wrong. I've got to fix this. The hot water tank busted and flooded my kitchen out and ruined my carpets. A short time later my dishwasher, the pump, broke and had more water. I had to take up my entire kitchen floor because the ceramic tiles, I couldn't glue them down anymore, couldn't grout them back in. These are all things that keep happening.

TR at 65. The individual described his current financial status as "fair at best."

I am behind on some bills and we are making efforts to pay on everything and we just paid on our mortgage. A few weeks ago I paid on the car payment. Right now it

has been hard because my wife had to take time off [from her job] to go up and see her mother, her mother had a triple bypass.

TR at 66. The individual testified that in a 2001 PSI, he stated that he was going to sell his home to correct some of his debt. At the Hearing, he stated that he placed his home on the market for a period of time but that he was unable to sell it because "it needs work." TR at 72. He stated that two of his automobiles have been involuntarily repossessed. TR at 72-73. He stated that he has only a debit card but that his wife has a credit card. TR at 73. The individual stated that he currently works several hundred miles from the family residence, so he shares a furnished apartment with a coworker. TR at 75-76.

The individual stated that he would like to be debt free. When asked what he needed to do to get there, he replied

I would like to avoid any more loans. I would hope nothing else goes wrong, I don't have to do another repair on my home or deal with a car breaking down and this other stuff. Medical stuff that comes up.

TR at 80. He stated that he has been trying to pay on his debts, but when asked of specifics, he stated

Some of them I haven't made payments to. It is not that I don't want to. I have to put certain things in certain priorities and those priorities, unfortunately, change. This week I might want to pay the electric bill first and buy food and pay the car payment. And something will happen and the car breaks down. Guess what? I'm going to fix that car because I have to get to work.

TR at 81. He stated that he would attempt to pay off his outstanding overdue debts as opportunities arise, but that "it may be a couple more years for some of them." TR at 86. When asked why there still were several small, overdue bills on his July 2006 credit report, the individual replied that

some of these I may not even remember they are on there. I can't even begin to tell you what they are for. Unless they send you a bill, you may actually forget about it, not intentional but.

TR at 91.

In his final statement, the individual asserted that he is not

purposely trying not to pay any bills, even though some of them are not being paid at the moment. I pay the ones I can as I can. And certain mitigating circumstances have arisen, or however you want to say it. And I can't help that. And it has put me behind the eight ball a few times and it is very hard to get out from behind that. And trying to make double payments and stuff like that.

TR at 169. The individual stated that he is not untrustworthy. TR at 170.

Following the Hearing, the individual faxed the DOE several hundred pages of documents concerning his daughter's car accident, his son's illness, other medical and prescription drug receipts, and miscellaneous bills for car and house repairs. See Faxes dated July 24 and 25, 2006.

*F. The Individual's Wife*

The individual's wife testified that works full time and is paid an hourly wage. She stated that two of her adult children live in the family home and that one of them is employed. She also has a minor child living at home. TR at 130-131. She stated that she has two VISA credit cards. She testified that the family has two loans at their credit union and that they have never been late on those loan payments. One is a small loan that they pay out of pocket and another is paid automatically out of the individual's paycheck. TR at 132. She described their current financial situation as follows:

Actually, six months ago I would say it was getting a whole lot better, and now, with [the individual] having to be away and supporting two households again and losing the overtime, it has probably gone back downhill again.

TR at 134. She stated that she had been working with the loan officer at their credit union to pay off old debts and was following his advice on how to improve their credit standing.

And he said, when you start paying everything off, don't even worry about doing the medical [bills] because the medical [bills] can't be used against you when you are applying for a loan or trying to get your finances current. He said, that is not the most important thing

to take care of. He said, try and concentrate mostly on you mortgage and make sure your car payments are caught up. And everything else, as long as the people are not bothering you for the money, he said, take one debt at a time and get rid of the lowest one first each time you start to do that, which is what we were doing with C Plan at the Credit Union. What they did was they helped us pay off American General and then we paid that loan. And they said that each time we got a loan paid off to pay each debt, they were going to help us clear our credit report.

TR at 137. She stated that the credit union was unable to continue assisting them after the individual's clearance was suspended in November 2005.

When his clearance was suspended and then the layoffs at the plants, they said they were unable to help us do that any longer because they didn't know if he was going to be continuing to work. That is why we haven't gotten a whole lot more cleared up.

TR at 137. She also stated that her daughter had been severely injured in an automobile accident in 2000, which caused a financial burden. TR at 138-139. She also described medical problems involving herself, her husband, her son, and her parents. TR at 146-147. I invited the individual and his wife to document the expenses and lost wages arising from these medical problems, and received a substantial amount of information in post hearing submissions.

Finally, the individual's wife stated that she and her husband do not take their financial problems lightly.

We are not spending any money out of the way. I'm trying to put every penny into bills. And my husband is a very honest and caring man that takes care of his kids. We have no intentions of doing anything to hurt the government.

TR at 148.

In a post-hearing letter, the individual's wife estimated that from 1999 through 2006, she has missed more than a year and a half of work to care for family members incapacitated by illness or

accidents. She also stated that in 2005, she was laid off for a period of time and lost approximately \$20,000 of earnings.

*G. The Credit Union Official*

An official at the individual's credit union testified that the individual currently has two loans with the credit union. He stated that the individual has a loan for \$8,700 that is secured by a vehicle and a loan for \$607 that is secured by another vehicle. TR at 157. He stated that the individual pays about \$525 per month in loan payments. TR at 158-159. He stated that the individual's money is direct deposited to the credit union and his loans are paid from the deposited money. TR at 156. He stated that the individual's income has been steady and that he is considered at low risk for default. *Id.* He testified that the credit union would consider additional loans to the individual based on his meeting their regular requirements for loans. TR at 159.

*H. The Individual's Neighbor*

The individual's neighbor testified that she has known the individual and his family for about eight years. She stated that she and the individual's wife are "best friends". TR at 97. She testified that in 2002 she loaned the individual \$6,500 because "they were in trouble with their mortgages on their house." TR at 96. She stated that they agreed to pay back the loan within two years. She testified that the individual made periodic payments and paid back the loan within the two year period. She described the individual as "an honest man." TR at 95. She stated that the only time that they travel is to visit their parents in another state. She testified that

they live from check to check, as far as I can tell.  
They don't go out and splurge money.

TR at 98.

*I. The Family Friend and His Wife*

The family friend testified that a couple of years ago he loaned the individual \$3,000, and that the individual repaid the loan exactly when he said he would. TR at 104-105. He stated that he would trust the individual with another loan.

Oh yeah, I would trust you. You get laid off here and you don't just stay home, you find a job somewhere else

and . . . you continue to work and try to support your family.

TR at 104. The family friend's wife testified that she and her husband loaned the individual money because he had some financial problems with his house. She stated that they charged the individual no interest on the loan. She testified that they have known the individual and his family for eleven or twelve years. TR at 101-102.

#### IV. ANALYSIS

At the Hearing, the individual contended that although his credit reports for May 2005 and July 2006 contain overdue and charged off accounts, he is making a sincere effort to settle those accounts. He testified that his current financial difficulties are caused or aggravated by several family medical emergencies that have resulted in a loss of income by his wife, as well as by accidental damage to his home resulting in costly repairs. He stated that he is honest and trustworthy, and that he will cooperate with the DOE in resolving its concerns about his financial situation. As discussed below, I find that the individual has not resolved the security concerns arising from his failure to meet his financial obligations.

From the testimony of the individual and his witnesses, and from the documentation that he has provided, I find that the individual is a hardworking man who is dedicated to supporting his family. However, there is a very serious security concern associated with an individual who has engaged in conduct showing a pattern of financial irresponsibility. See *Personnel Security Hearing (Case No. VSO-0073)*, 25 DOE ¶ 82,794 (1996). I find that such a pattern exists in the present case, where it is undisputed that the individual accrued extensive debts that required a bankruptcy proceeding in 1999 to resolve. The individual's continued record of unpaid debts and late payments on his debts from 1999 until 2006 convinces me that a security concern exists regarding his failure to meet his financial obligations. Accordingly, as I explained to the individual prior to the Hearing, he must present mitigating evidence and testimony sufficient to resolve these concerns.

After reviewing the record, I find that the individual has made insufficient progress in managing his finances since his 1999 bankruptcy. At the Hearing, he admitted that thousands of dollars in charged off accounts appear on his July 2006 credit report. Although he has submitted information that an outstanding debt for



\$1,110 owed to AMER GEN has been resolved, several other charged off or overdue accounts remain on his credit report. The individual testified that he is negotiating with another creditor, AMERICACREDI, to resolve a debt of \$10,987. However, he also stated that he may not be able to borrow sufficient funds at this time to pay the proposed settlement. He stated that other charged off and overdue accounts will be paid as he is able, but that it may take "a couple more years for some of them." He also admits that he recently borrowed several thousand dollars from two friends in order to make overdue payments on his home mortgage and avoid foreclosure. Although he has repaid these loans, his need to borrow money to make mortgage payments raises a concern. Moreover, it does not appear that his current monthly budget allows him to make any significant payments on his outstanding debts or to pay for significant repair bills or medical expenses that are likely to arise in the future.

The individual contended at the Hearing that his documentation of medical expenses and lost wages due to family illnesses in the years from 1999 through 2006 mitigate the DOE concerns about his outstanding debt and his record of late payments on his house and car loans. I do not agree. The recently issued revision of the DOE's Adjudicative Guidelines provides that a factor supporting mitigation of security concerns raised by an individual's financial problem is a showing that the problem was caused by conditions such as an unexpected medical emergency that were largely beyond a person's control. <sup>4/</sup> However, this showing must be coupled with other factors supporting mitigation. These other factors include showings that (1) the individual acted responsibly under the circumstances when dealing with the financial emergency; (2) there are clear indications that the individual's financial problem is being resolved or is under control; and (3) the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve his debts. *Id.* As discussed above, the individual has several significant charged out or overdue debts on

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<sup>4/</sup> The "Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968", were originally published as an appendix to Subpart A of the Part 710 regulations at 66 Fed. Reg. 47061 (September 11, 2001). See Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Guideline F, Paragraph 20, at <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

his current credit report and there is no clear indication of when or how he will resolve these debts. He also has a record of late payments on his house and car loans in recent years. Accordingly, I find that he has not met the Adjudicative Guidelines criteria for mitigating a financial problem.

Finally, previous decisions issued by DOE Hearing Officers have held that once there is a long pattern of financial irresponsibility, an individual must demonstrate a sustained, new pattern of financial responsibility sufficient to demonstrate that a recurrence of the past pattern is unlikely. See, e.g., *Personnel Security Hearing (Case No. VSO-0108)*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the individual clearly has a long term pattern of failing to meet his financial obligations, and he has not provided any information which indicates that he is now able to meet his financial obligations. The individual's family budget indicates that he remains in precarious financial condition with little available family earnings available to resolve delinquent accounts or to use to pay emergency expenses. Under these circumstances, I find that the individual has not mitigated the DOE's security concerns with respect to Criterion (1) arising from his history of financial irresponsibility.

#### V. CONCLUSION

For the reasons set forth above, I find that the DOE properly invoked Criterion (1) in suspending the individual's access authorization. After considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I find that the evidence and arguments advanced by the individual do not convince me that he has mitigated the DOE's security concerns. Accordingly, I cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access

authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: September 21, 2006